

THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 19/Mum/2018 (Assessment Year 2013-14)
I.T.A. No. 145/Mum/2018 (Assessment Year 2010-11)

Shri Ravindra Prataprai Doshi Room No. 6, A Wing Premrose CHS, Dadasaheb Gaikwad Road, Tambe Nagar Mulund(E), Mumbai-400 080. PAN :AASPD6694B (Appellant)	Vs.	ITO Ward 29(3)(1) 305, C-10 Pratyakshkar Bhavan Bandra Kurla Complex, Bandra(E) Mumbai-400 051. (Respondent)
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Assessee by	None
Department by	Shri D.G. Pansari
Date of Hearing	19.6.2019
Date of Pronouncement	04.9.2019

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against respective order of learned CIT-A and pertaining to assessment years 2010-11 & 2013-14.

2. The grounds of appeal for A.Y. 2013-14 read as under :-

On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax - Appeals 40, Mumbai, hereinafter referred to as the Ld. CIT (A) has erred in law in confirming the addition of Rs.53,27,059/ in respect of unexplained cash credit u/s.69/69B of the Income Tax Act, 1961. The said addition may please be deleted.

3. Grounds of appeal for A.Y. 2010-11 read as under :-

On the facts and in the circumstances of the case and in law, the Commissioner of Income Tax - Appeals 40, Mumbai, hereinafter referred to as the Ld. CIT (A) has erred in law in confirming the addition of Rs.1,67,42,690/- in respect of unexplained cash credit u/s.69/69B of the Income Tax Act, 1961. The said addition may please be deleted.

On the facts and in the circumstances of the case and in law, The Ld. CIT (A) has erred in confirming the addition of Rs. 14,470/- on account of Short Term Capital Gain. The said addition may please be deleted.

4. Brief facts of the case are as under :- (A.Y. 2013-14)

A survey u/s. 133 of the Act was conducted at the residential premises of the assessee on 19.10.2013 during which the assessee admitted that he was maintaining S/B A/c No. 021201200035 in Cosmos Co-operative Bank Ltd., Zaveri Bazar Branch. Amount of cash deposited in this S/B A/c during the previous year under consideration was Rs. 18,59,678/-. Since the assessee was not able to explain the nature and source of this cash deposit in the savings account, he admitted the same to be his income from undisclosed sources, in the statement recorded under section 131 of the IT Act on 21/10/2013 and 23/10/2013 in the Income Tax Office at Matru Mandir, Tardeo Road, Mumbai. It was also found during the course of survey that the assessee was proprietor of M/s R P Trading Co, Montex Enterprises and M/s Doshi Trading Co. All these proprietorship concerns were having bank account in Cosmos Co-operative Bank Ltd, Zaveri Bazar Branch and there were a number of transactions in these bank accounts. The assessee was also found to be a director in following 5 Pvt. Ltd. Companies

Rich Trading Pvt. Ltd.
Gallup Trading Pvt. Ltd.
Rapar Trading Pvt. Ltd.
Avneel Tradinn Pvt. Ltd. and
Trendz Trading Pvt. Ltd.

4. Since the assessee did not file the return of income for the A.Y. under consideration, notice under section 142 of the IT Act was issued to the assessee on 25/02/2014 calling for the return of income. The assessee did not comply with the notice issued on 25/02/2014. The return of income was filed by the assessee only on 13/03/2015 declaring total income at Rs. 1,97,703/-. The case was selected for scrutiny and the notice u/s 143(2) of the IT Act was issued to the assessee on 27/03/2015. Subsequently, notice under section 142(1) IT Act was issued to the assessee on 07/01/2016 calling for certain information. However, he did not reply to notice u/s 142(1) of the IT Act. AIR data of the assessee showed that the case was deposited by the assessee 42 times during the relevant previous year and total cash deposited was Rs.

53,29,356/-. This included the cash of Rs. 18,59,678/- deposited by the assessee in his savings account. In absence of any explanation from the assessee, entire amount of cash deposit i.e. Rs. 53,29,356/- was added in the hands of the assessee as unexplained cash credit u/s. 68 of the I.T. Act.

5. Upon assessee's appeal learned CIT(A) noted that nobody appeared on behalf of the assessee despite notice. Learned CIT confirmed the addition by holding as under :-

As mentioned above, the appellant has not furnished any explanation regarding the source and the nature of deposits amounting to Rs.53,29,356/- in his Bank Accounts during the course of assessment proceedings. The appellant has not given any explanation during the course of appellate proceedings either. Therefore, in absence of any explanation regarding source and nature of the deposits in his Bank accounts with the Cosmos Co-operative Bank, there is no option before the undersigned but to confirm the addition made by the AO. It is not clear whether the appellant has maintained any books of accounts or not. In case, books of account are being maintained by the appellant, the amount is taxable under section 68 of the IT Act, however, in case no books of accounts are maintained by the appellant, the amount is taxable under section 69/69B of the IT Act as held by the Special Bench of ITAT, New Delhi in the case of Manoj Aggarwal Vs DCIT [2008] 113 ITD 377 (DELHF) (SB). Accordingly, the first ground of appeal is dismissed and addition of Rs. 53,29,356/- made by the AO is confirmed.

6. For A.Y. 2010-11, for unexplained cash deposit the Assessing Officer has also noted that assessee in statement u/s. 133A has accepted to be his undisclosed income.

7. Against these orders assessee is in appeal before us. We have heard the learned departmental representative and perused the records. None appeared on behalf of the assessee despite notice.

8. We find that the addition in this case has been done as there are unexplained cash deposits in the bank of the assessee. Assessee has not provided any detail regarding the source through which this cash was generated and deposited in the bank account. As a matter of fact for A.Y. 2010-11 assessee has accepted it to be undisclosed income. In this view of the matter in our considered opinion the unexplained cash deposit in the bank of

the assessee is liable to be added in the hands of the assessee as income from undisclosed source. Hence we do not find any infirmity in the order of learned CIT(A). Hence we uphold the same.

9. In the result this appeal by the assessee stands dismissed
Order has been pronounced in the Court on 4.9.2019.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/9/2019

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai